

REMARKS

Careful consideration has been given to the Office Action of April 1, 2008, and it is respectfully requested that the application as amended be reexamined. It is also requested that this paper be deemed a petition to the Director of the U.S. Patent & Trademark Office to extend the time for reply to the Office Action of April 1, 2008 from July 1, 2008 to August 1, 2008. Submitted herewith is a check for \$120.00 to cover the cost of the extension.

The claims now in the application have been amended [Claim 17] to limit them to particular forms of gum arabic of a particular, specified minimum size made by a process which does not include a step involving treatment of the gum arabic with octenylsuccinic acid. For reasons which will be discussed below, applicant believes that the claims as now amended avoid the substantive rejections under 35 U.S.C. § 102(b) and § 103(a). Moreover, the claims are believed to be in compliance with 35 U.S.C. § 112, Para. 1. The amendments to claim 17 relating to the form and size of the gum arabic particles are supported in the specification at page 7, lines 16-19. The amendment limiting the process to the absence of an octenylsuccinic acid treatment step is supported by the content and thrust of the entire specification. While there is no specific language in the specification excluding treatment with octenylsuccinic acid, neither is there any suggestion, however remote, that would lead any person of skill in the art to consider that an octenylsuccinic acid treatment step is contemplated by the specification. This is believed to comply with the requirements for "a written description" set forth in M.P.E.P § 2173.05(i).

Applicant notes the rejection of claims 17-25 under 35 U.S.C. § 102(b) as allegedly being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as allegedly being obvious from Wilson ('378); and the rejection of claims 26-31 under 35 U.S.C. § 102(b) as allegedly

being anticipated by Ward. These rejections, insofar as they may be applied to newly amended claim 17, and dependent claims 18-31 are all respectfully traversed.

With respect to the rejection of claims 26-31 under 35 U.S.C. § 102(b) as being anticipated by Ward, it is believed, and respectfully submitted that this rejection is overcome by the above referenced amendments to claim 17. More specifically, the modified gum arabic of claim 26, i.e., the modified gum arabic obtained by the method according to claim 17 is not octenylsuccinylated, since the gum arabic is not treated with octenylsuccinic acid. On the contrary, the modified gum arabic described by Ward is octenylsuccinylated, since the gum arabic in Ward is treated with octenylsuccinic acid. In simple terms, the obtained gum arabic in claim 26 is different from the gum arabic described in Ward. Therefore, claims 26-31 are novel over, and unanticipated by Ward.

With respect to the rejection of claims 17-25 under 35 U.S.C. § 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over, Wilson et al., these rejections are respectfully traversed. Wilson et al. teaches that a process comprising (a) placing a dry powdered natural gum such as gum arabic in a layer in a chamber; and (b) heating said layer at a temperature between about 160°F. and 190°F. and a relative humidity between about 50 and 85 % will provide a powdered product therefrom with an acceptable standard plate count value and with an acceptable viscosity level as shown in claim 10 and the examples. Based on the description of Wilson et al., the Examiner suggests that the reaction conditions used by Wilson et al. are the same as those claimed by the Applicants and the silence of Wilson et al. with respect to the emulsifying ability of the prepared gum arabic does not mean that the said gum arabic does not have an improved emulsifying ability. Further, the Examiner also suggests that a skilled artisan would reasonably expect the purified gum arabic, to have an improved emulsifying ability.

However, as the Examiner notes, Wilson et al. is silent about the physical properties that pertain to the emulsifying ability of the gum arabic prepared by the Wilson et al process.

With respect to this contention of the Examiner, the applicants have ascertained whether or not the gum arabic prepared according to the Wilson et al. Process has an improved emulsifying ability, by comparing it with the gum arabic prepared according to the method described in claim 17 of this application. The experimental data establishing the differences are set forth in the annexed Rule 132 Declaration of Dr. Tsuyoshi Katayama.

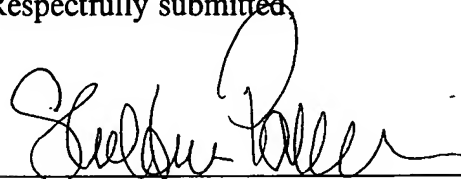
As is clear from Wilson et al., especially claim 10 and Example I, Wilson et al. uses a dry powdered natural gum such as gum arabic as a sample (unmodified). Therefore, in the experimental data, gum arabic mechanical powder (average particle diameter: 300 μm) is used as the dry powdered natural gum of Wilson et al. This gum arabic mechanical powder is presumably the same gum arabic as was used in the test by Wilson et al. As is clear from the amendment in present claim 17, the gum arabic (unmodified) is limited to a gum arabic which is a block, bead, crude pulverizate, granule or pellet having an average particle diameter not less than 1 mm. Therefore, in the experimental data, coarsely ground gum arabic (average particle diameter: 1mm and 5 mm) was used as a sample (i.e., as an unmodified gum arabic).

It is clear from the results of the experimental data that when gum arabic mechanical powder with an average particle diameter of 300 μm was used, the gum arabic underwent a marked color change, agglomerated into a syrupy mass, and adhered to the container. In addition, gum arabic mechanical powder with an average particle diameter of 300 μm solidified into a syrupy mass after treatment. The solidified sample could not be dissolved to evaluate the emulsifying ability. Further, for the emulsifying ability to be evaluated, the sample which had solidified into a syrupy mass had to be crushed, the moisture content of the crushed sample needed to be measured and the amount of crushed sample used needed to be adjusted. That is to say, when a dry powdered natural gum is used as a sample (unmodified gum) as described in Wilson et al., a desirable and improved modified gum arabic cannot be obtained. Therefore, a skilled artisan would not reasonably expect from Wilson et al. that a modified gum arabic which has an improved emulsifying ability would be obtained as is the case with the modified gum arabic of claim 17. On the contrary, it is clear from the results of

the experimental data that a modified gum arabic with good appearance, emulsifying ability and viscosity was obtained, when gum arabic with an average particle diameter of 1 mm or 5 mm was used as a sample (an unmodified gum arabic). These data, it is submitted, establish the unexpected superiority of the modified gum arabic of the invention as compared to the modified gum arabic of the cited references.

In view of the forgoing amendments, arguments and the annexed Rule 132 Declaration, applicant submits that the claims are in compliance with 35 U.S.C. § 112, free of the cited art and accordingly, in condition for allowance. Favorable reconsideration of the application is earnestly solicited.

Respectfully submitted,



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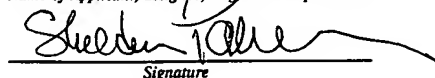
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July 31, 2008

Date of Deposit

Sheldon Palmer

Name of Applicant, assignee, Registered Representative



Signature

July 31, 2008

Date of Signature